

RECORDING REQUESTED BY:

Bruce MacPhail
President
McPhail's, Inc.
P.O. Box 801
Petaluma, California 94953-0801



AT REQUEST OF:

1998 0154991

OFFICIAL RECORDS OF
SONOMA COUNTY
BERNICE A. PETERSON

12/24/1998 08:01:40
FEE: \$ 76.00 PGS: 12
TT: \$.00 PAID

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Coastal Cleanup Operations Branch

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Capped Portion of
1006 Lakeville Highway
Petaluma, California
A.P.No. 5-060-17

This Covenant and Agreement ("Covenant") is made by and between McPhail's, Inc. (the "Covenantor"), the current owner of property situated in Petaluma, County of Sonoma, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 1 acre is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in a light industrial area bounded by Lakeville Highway to the north and a drainage ditch and railroad tracks to the south in Petaluma, County of Sonoma, State of California. This Property is more specifically described as Sonoma County Assessor's Parcel No. 5-060-17.

1.02. A limited portion of the Property is more particularly described in Exhibit "B" which is attached and incorporated by this reference ("Capped Property") as defined below. The Capped Property is located in the southernmost end of the property in the area now bounded by warehouse buildings to the north and east, a drainage ditch to the south, and a chain-link fence to the west. The approximate dimensions of the Capped Property are 130 feet by 80 feet.

1.03. The Covenantor is remediating the Property under the supervision and authority of the Department. The Property is being remediated in accordance with a Removal Action Work Plan pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC Section 25260, including lead, remain in the soil under the Capped Property, the Removal Action Work Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the Removal Action Workplan, which contains a Streamlined Risk Assessment, together with a draft Negative Declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Removal Action Workplan and the Negative Declaration were approved by the Department on August 21, 1998. Removal actions include soil excavation/onsite consolidation, and installation of asphalt Cap to remediate soil containing concentrations of lead above an average residential cleanup level of 400 mg/kg. Operation and maintenance of the Cap will be required pursuant to an Operation and Maintenance Plan incorporated into an Operation and Maintenance Agreement between McPhail's, Inc. and the Department.

1.04. As detailed in the Streamlined Risk Assessment Section of the Removal Action Workplan as approved by the Department on August 21, 1998, a portion of the soils contains hazardous substances, as defined in H&SC section 25316, which include lead up to 69,000 mg/kg. Groundwater at the Property is found 11 to 13 feet below ground surface. Groundwater sampling analytical results show no contamination. Based on the Streamlined Risk Assessment, the Department has determined that the use of the Capped Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department has further determined that the Capped Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable risk to human safety or the environment.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction : (a) runs with the land pursuant to H&SC section 25355.5 (a) (1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of , and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a) (1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471 (b) , all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall

not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Capped Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil underneath the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Capped Property.

4.03. Non-Interference with Cap Property

Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall not impair the integrity of the Cap. Covenantor further agrees to immediately repair any full-thickness cracks in the Cap.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the Cap that could affect the ability of the Cap to contain subsurface hazardous substances or hazardous materials in the Capped Property, and (ii) the type and date of repair of such disturbance.

Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

4.05. Access for Implementing O&M. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V **ENFORCEMENT**

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any Improvements. "Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI **VARIANCE, TERMINATION, AND TERM**

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sonoma within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: McPhail's, Inc.
 P.O. Box 801
 Petaluma, California 94953-0801

To Department: Department of Toxic Substances Control
 700 Heinz Avenue, Suite 200
 Berkeley, CA 94710
 Attention: Barbara J. Cook, P.E., Chief
 Northern Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Party Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.


"Covenantor"

Date: 12-16-98

By: 
VP/CFO

"Department"

Date: 12-22-98

By: 

STATE OF CALIFORNIA

COUNTY OF

Sonoma

On this 16th day of December, in the year 1998

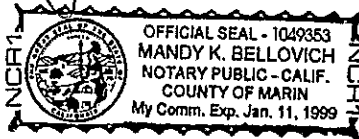
before me Mandy K. Bellovich, Notary Public, personally appeared

Dennis S. Parsons

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the persons whose names ^{are} subscribed to the within instrument and acknowledged to me that ^{they} executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

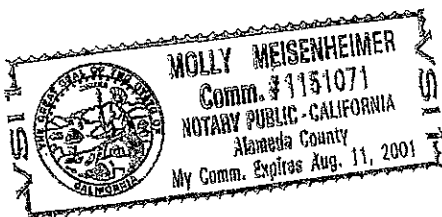
State of California

County of Alameda

On 12-22-98 before me, Molly Meisenheimer, notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Barbara J. Cook
Name(s) of Signer(s)

☐ personally known to me – **OR** – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Molly Meisenheimer
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to restrict land use
 Document Date: 12/10/98 Number of Pages: 11 (including legal desc. of land)
 Signer(s) Other Than Named Above: Dennis S. Parsons

Capacity(ies) Claimed by Signer(s)

Signer's Name: Barbara J. Cook

- ☐ Individual
☒ Corporate Officer
 Title(s): Branch Chief of Environmental Protection
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing:

State of California

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT OF SIGNER
 Top of thumb here

Signer Is Representing:

EXHIBIT A

90072265

PAGE THREE

51101-TO

DESCRIPTION:

All that real property situated in the City of Petaluma, County of Sonoma, State of California, described as follows:

PARCEL ONE:

Lying in Petaluma Rancho Township 5 North, Range 7 West, M.D.B. & M., and being a portion of that parcel of land described in Deed recorded in Book 759, of Official Records at page 6, Sonoma County Records, and being more particularly described as follows:

COMMENCING at a point on the southerly line of the Lakerville Highway said point being South 86° 28' 50" East 1120.83 feet from the intersection of the southerly line of said Highway with the easterly boundary of the City of Petaluma, said point being marked by a 2" x 2" hub; thence from said point of commencement and along the southerly boundary of the State of California property South 81° 09' 10" East (State bearing South 80° 49' East) 239.7 feet to a point marked by a 6" x 6" concrete monument; thence on a curve to the right with a radius of 700 feet from a tangent which bears South 86° 33' 33" East (State bearing South 86° 13' 35" East) for a distance of 157.05 feet to a point marked by a 1/2" iron pipe and the point of beginning of the parcel of land to be herein described; thence from said point of beginning and continuing on a curve to the right with a radius of 700 feet for a distance of 90.84 feet to a point marked by an iron pipe; thence leaving said southerly line of the State of California property South 12° 37' West 465.52 feet to a point marked by an iron pipe on the northerly line of the Northwestern Pacific Railroad; thence along said line North 77° 22' 30" West 90.0 feet to a point marked by an iron pipe; thence North 12° 37' East 477.37 feet to the point of beginning.

PARCEL TWO:

A right of way for general road and utility purposes over a strip of land 30 feet in width, the centerline of which is coincident with the easterly line of the above described parcel of land.

A. P. N o. 5-060-17

90072265

EXHIBIT _____

The land referred to herein is situate in the State of California, County of Sonoma, City of Petaluma and described as follows:

Being a portion of the Lands of McPhails, Inc. described by deed recorded as Document No. 1980-072265 of Official Records, Sonoma County Records. Said lands have been surveyed and said survey is shown upon a Record of Survey map filed on February 3, 1992 in Book 488 of Maps at page 31, Sonoma County Records; said portion of land is more particularly described as follows:

Commencing at the most southeasterly corner of said lands as shown on the above mentioned Record of Survey, said corner being marked by a $\frac{3}{4}$ inch iron pipe monument; thence from said point of commencement and along the easterly boundary of said lands as shown on said map, North $12^{\circ} 56' 02''$ East, 45.00 feet; thence leaving said easterly line North $77^{\circ} 03' 58''$ West, 8.00 feet to the true Point of Beginning; thence from said point the following courses and distances: North $12^{\circ} 56' 02''$ East, 136.00 feet and North $77^{\circ} 03' 58''$ West, 76.00 feet to a point; said point bears North $48^{\circ} 10' 41''$ East, 10.50 feet from a brass tag (marked R.C.E. 24916) set in a concrete fence post foundation and shown as being set on the above mentioned Record of Survey map; thence from said point the following courses and distances: South $12^{\circ} 56' 02''$ West, 136.00 feet and South $77^{\circ} 03' 58''$ East, 76.00 feet to the true Point of Beginning.

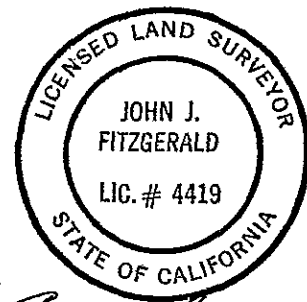
Containing 10,336 square feet more or less.

The Basis of Bearing for this description is the above mentioned map file in Book 488 of Maps at page 31, Sonoma County Records.

(Portion of APN 005-060-15.)

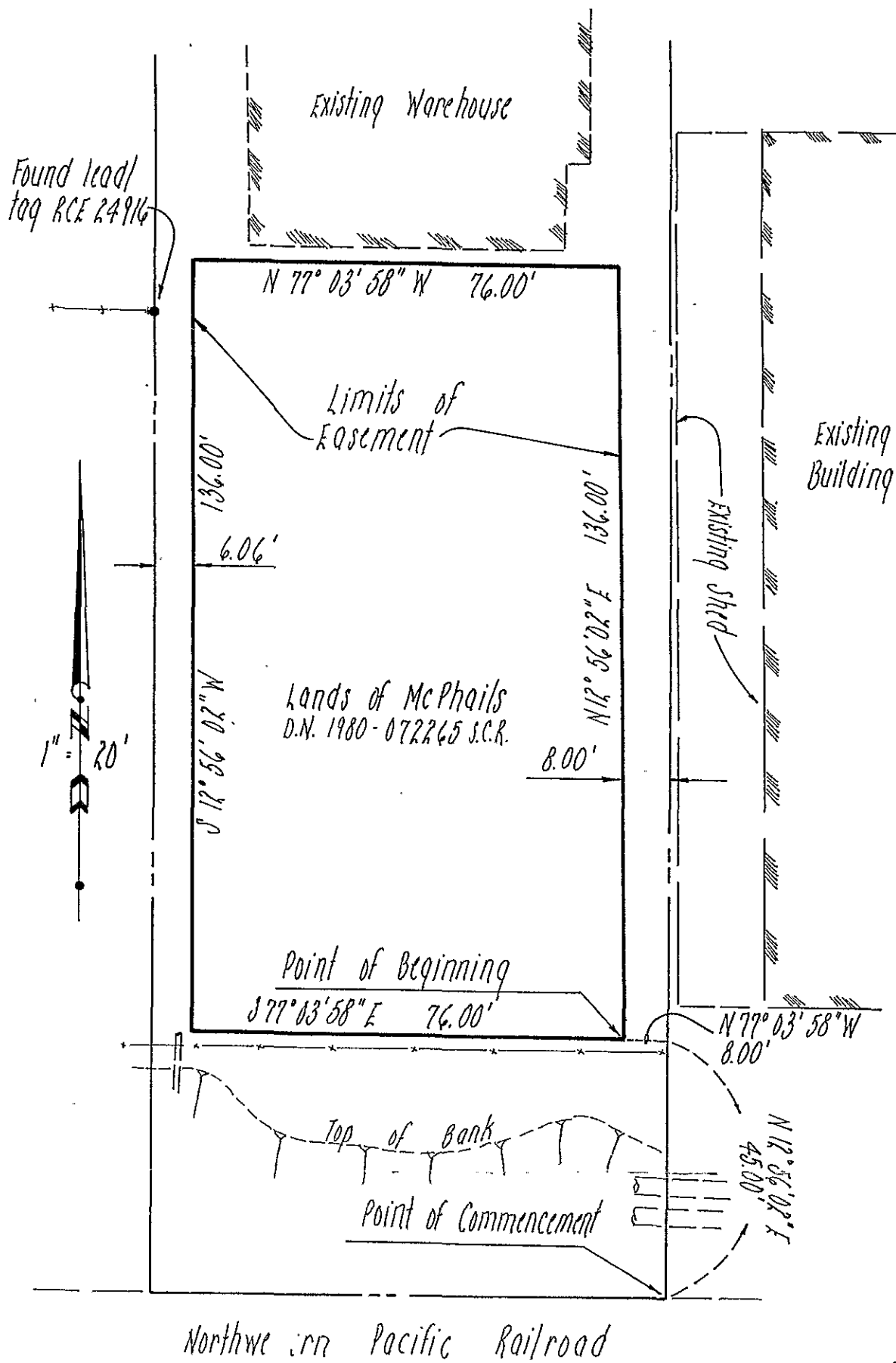
Prepared in the office of:

FitzGerald & Associates
1010 Lakeville Street, Suite 2-B
Petaluma, CA
Job No. 97-752



John J. Fitzgerald 12-16-98
John J. Fitzgerald Date
P.L.S. 4419
License Expires 9-30-01

Exhibit



File No. 97-752
December 1998

Prepared in the Office of:
FitzGerald and Associates
1010 Lakeville St., Petaluma, CA. 94952
(707) 762-1117